IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2675 of 2004
To
FIRST APPEAL No. 2678 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DY.GENERAL MANAGER - Appellant(s)
Versus
THAKOR KADVAJI RANAJI & 1 - Defendant(s)

==========

Appearance :
MR RR MARSHALL for Appellant(s) : 1,
MR AJ PATEL for Defendant(s) : 1,
None for Defendant(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 22/02/2007

ORAL COMMON JUDGMENT :

Since these four appeals arise from common judgment and award

made by the 4th Joint Civil Judge [S.D.], Mehsana dated 22/4/2004 in Land Acquisition Reference No. 3341 of 2003 and its allied reference cases, they are heard together and now they are being disposed of by this common judgment.

2. This is a case of temporary occupation of the land in question under section 35 of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act']. The present reference is made under section 35 (3) of the Act. The appellant required the land for the purpose of drilling wells and, therefore, proposal to initiate proceedings under section 35 of the Act was made to the Government and accordingly, the Collector was directed to take the occupation of the land to be entrusted to the appellant for the aforesaid purpose. After completion of the requisite procedure, the land was occupied on 11/5/1989. The Collector fixed the compensation at the rate of Rs.00-75 paise per sq. mtr., per annum. Since the contesting respondents were dissatisfied with the quantum, they raised dispute as to the sufficiency of the compensation and ultimately reference under section 35 (3) of the Act was made. The Ld. Judge held that that quantum of compensation fixed by the Collector was inadequate and he determined it at Rs.4-50 per sq. mtr., per annum. Being aggrieved by the same, the appellant has preferred these appeals.

3. It is submitted by Mr. Marshall, learned advocate for the appellant that request for making reference has been submitted much after expiry of

period of three years and, therefore, it is time barred. According to him, though this plea was raised before the Reference Court, it has not considered it. He has further submitted that under section 35 of the Act the Court has only power to give its decision in respect of the period of three years commencing from the date of occupation and its decision could not cover the subsequent period. He has, therefore, submitted that the award of the Reference Court is erroneous to the extent it covers period after expiry of three years from the date of occupation. He has ultimately submitted that the case be remitted to the Reference Court for reconsideration on the point of limitation.

3.1. As against that, Mr. AJ Patel, learned advocate for the contesting respondents has supported the judgment and has submitted that the rate of compensation determined by the Court is just and proper. Of-course, he has not disputed the point of law raised by Mr. Marshall with regard to the scope of the reference under section 35 (3) of the Act.

4. Mr. Marshal has drawn my attention to the written statement filed on behalf of the appellant. In the written statement specific plea has been raised with regard to limitation. It is clearly stated that the reference is time barred. He has also drawn my attention to the written submissions made on behalf of the appellant. In this also, specific submission has been made on the question of limitation. However, the Ld. Judge has not considered the same. When such plea has been specifically raised, it was the duty of the Court to

frame proper issue on the question of limitation and to decide it on the basis of the evidence that may be adduced before it. That has not been done. Hence, this case deserves to be remitted to it for its decision on the aspect of limitation.

4.1. So far as the other submission of Mr. Marshal is concerned, it has to be accepted since this Court has rendered a decision in First Appeal No. 2568 of 1999 and its cognate appeals dated 27/12/2006 wherein it has been observed as under :-

> "12.3. This principle can safely be applied to the scope of Reference under Section 35(3) of the Act. Under the scope of Section 35 (3) of the Act, the Court is required to give decision on difference as to sufficiency of compensation only for a period of three years from the date of occupation of the land. Any decision covering subsequent period would be beyond the scope of reference and the Court is not permitted to cover such period."

5. In view of the same, there is no doubt in my mind that the Court can consider the question with regard to sufficiency of the compensation only for the period of three years commencing from the date of occupation and not beyond that. The Reference Court will therefore keep this aspect in view while deciding the reference on remand. The result is that the judgment and awards made in Land Acquisition References No. 3341 of 2003 to 3344 of 2003 are quashed and set aside. The cases are remanded to the Reference Court for its decision. The parties will be at liberty to lead additional evidence so far as the question of limitation is concerned. The other evidence will remain as it is. The

Court to complete the exercise on or before 31st August, 2007. Appeals are disposed of accordingly.

[Akshay H Mehta, J.]

* Pansala.